

REMARKS

The Examiner has rejected pending claims 11-20, 23-26, 47-56, and 59-72 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of United States Patent No. 6,345,095.¹

Filed herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent executed by the inventor and owner of the above-captioned application number 10/090,004. The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991). The filing of a terminal disclaimer serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection. *Id.*; M.P.E.P. § 804.02. Based upon filing of the Disclaimer and accompanying fee, Applicant respectfully submits that all of the obviousness-type double patenting rejections should be withdrawn.

OTHER MATTERS

The Examiner indicated on the PTO Form SB/08 returned with the November 13, 2003 Office Action that he was unable to locate a copy of one of the references cited in the file of the parent application (reference X). A copy of that reference is included herewith for the convenience of the Examiner.

CONCLUSION

Prompt and favorable consideration of this Amendment is respectfully requested. All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes

¹ Page 2 of the Office Action cites U.S. Patent No. 6,633,763, rather than 6,345,095 for the obviousness-type double patenting rejection. However, in a telephonic interview with applicant's representative, the Examiner indicated that the rejection should have been based on U.S. Patent No. 6,345,095.

that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: January 16, 2004

Respectfully submitted,

By 

Joseph E. Topmiller

Registration No.: 50,580

COVINGTON & BURLING

1201 Pennsylvania Avenue, N.W.

Washington, DC 20004-2401

(202) 662-6000